

*Clark, J.*  
UNIVERSITY OF TEXAS  
SCHOOL OF LAW  
TARLTON LAW LIBRARY

## TRANSCRIPT OF RECORD

---

### Supreme Court of the United States

OCTOBER TERM, 1952-1953

No. 8 1

---

OLIVER BROWN, MRS. RICHARD LAWTON, MRS.  
SADIE EMMANUEL, ET AL., APPELLANTS,

*vs.*

BOARD OF EDUCATION OF TOPEKA, SHAWNEE  
COUNTY, KANSAS, ET AL.

---

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF KANSAS

---

FILED NOVEMBER 19, 1951

Probable jurisdiction noted June 9, 1952

UNIVERSITY OF TEXAS  
SCHOOL OF LAW  
TARLTON LAW LIBRARY

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 8

OLIVER BROWN, MRS. RICHARD LAWTON, MRS.  
SADIE EMMANUEL, ET AL., APPELLANTS,

vs.

BOARD OF EDUCATION OF TOPEKA, SHAWNEE  
COUNTY, KANSAS, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF KANSAS

INDEX

|  | Original | Print |
|--|----------|-------|
| Record from U.S.D.C. for the District of Kansas.....                                 | 1        | 1     |
| Caption ..... (omitted in printing) ..   | a        |       |
| Amended complaint .....  | 1        | 1     |
| Motion for a more definite statement and to strike....                               | 8        | 8     |
| Docket entry—Motion denied, except as to paragraph<br>8, which is to be amended..... | 11       | 10    |
| Amendment to paragraph 8 of amended complaint....                                    | 12       | 10    |
| Answer to amended complaint as amended in para-<br>graph 8 thereof.....              | 13       | 11    |
| Separate answer of the State of Kansas.....  | 17       | 14    |
| Transcript of proceedings of pre-trial conference....                                | 19       | 15    |
| Appearances .....  | 19       | 15    |
| Colloquy between court and counsel.....  | 21       | 16    |
| Reporter's certificate ..... (omitted in printing) ..                                | 98       |       |

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 8, 1952.

UNIVERSITY OF TEXAS  
SCHOOL OF LAW  
TARLTON LAW LIBRARY

| Record from U.S.D.C. for the District of Kansas—Continued  | original | Print |
|--|----------|-------|
| Order correcting transcript of record.....   | 99       | 62    |
| Transcript of proceedings, June 25, 1951.....  | 105      | 63    |
| Caption .....  | 106      | 63    |
| Colloquy between Court and counsel.....  | 107      | 63    |
| Offers in evidence .....   | 108      | 64    |
| Testimony of Arthur H. Saville .....   | 115      | 68    |
| Kenneth McFarland .....  | 121      | 72    |
| Lena Mae Carper .....  | 136      | 81    |
| Katherine Carper .....   | 141      | 85    |
| Oliver L. Brown .....  | 145      | 88    |
| Darlene Watson .....   | 155      | 94    |
| Alma Jean Galloway .....   | 158      | 96    |
| Sadie Emanuel .....  | 160      | 97    |
| Shirley Mae Hodison .....  | 164      | 100   |
| James V. Richardson .....  | 167      | 102   |
| Lucinda Todd .....   | 169      | 103   |
| Marguerite Emmerson .....  | 171      | 104   |
| Zelma Henderson .....  | 173      | 105   |
| Silas Hardwick Fleming .....   | 176      | 107   |
| Hugh W. Speer .....  | 182      | 111   |
| James H. Buchanan .....  | 233      | 143   |
| R. S. B. English .....   | 248      | 153   |
| Wilbur B. Brookover .....  | 263      | 162   |
| Louisa Holt .....  | 272      | 168   |
| John J. Kane .....   | 283      | 175   |
| Bettie Belk .....  | 291      | 180   |
| Dorothy Crawford .....   | 303      | 187   |
| Clarence G. Grimes .....   | 309      | 191   |
| Thelma Mifflin .....   | 317      | 196   |
| Kenneth McFarland (Recalled)....   | 331      | 205   |
| Ernest Manheim .....   | 342      | 213   |
| Colloquy between court on counsel.....   | 347      | 216   |
| Opening argument on behalf of plaintiff .....  | 349      | 217   |
| Argument on behalf of defendants .....   | 363      | 225   |
| Closing argument on behalf of plaintiff .....  | 372      | 231   |
| Colloquy between Court and counsel .....   | 377      | 233   |
| Reporter's certificate .....   | 384      |       |
| Clerk's certificate .....  | 385      |       |
| Opinion, Huxman, J. ....   | 386      | 238   |
| Findings of fact and conclusions of law .....  | 393      | 244   |
| Decree .....   | 397      | 247   |
| Petition for appeal .....  | 398      | 248   |
| Assignment of errors and prayer for reversal .....   | 400      | 249   |
| Order allowing appeal .....  | 403      | 251   |
| Citation on appeal .....   | 405      |       |
| Note re cost bond .....  | 406      | 252   |
| Statement required by paragraph 2 rule 12 of the rules<br>of the Supreme Court (omitted in printing) ..... | 407      |       |

UNIVERSITY OF TEXAS  
SCHOOL OF LAW  
TARLTON LAW LIBRARY

INDEX

iii

|   | Original | Print |
|---|----------|-------|
| Record from U.S.D.C. for the District of Kansas—Continued                                   |          |       |
| Praeclipe for transcript.....(omitted in printing) ..                                       | 412      |       |
| Order extending time to file and docket record on appeal .....                              | 414      | 253   |
| Clerk's certificate .....(omitted in printing) ..   | 415      |       |
| Statement of points to be relied upon and designation of parts of record to be printed..... | 416      |       |
| Order noting probable jurisdiction.....   | 418      | 254   |

UNIVERSITY OF TEXAS  
SCHOOL OF LAW  
TARLTON LAW LIBRARY

153

R. S. B. ENGLISH, having been first duly sworn, assumed the stand and testified as follows:

Direct examination.

By Mr. Greenberg:

Q. Will you please tell the Court your full name, Mr. English.

A. Horace B. English.

Q. What is your occupation, Mr. English?

A. I am professor of psychology at the Ohio State University.

Q. Would you tell the Court something about your background and the degrees you hold.

A. I took my Bachelor's Degree at Oxford University, and there I also took a certificate in cultural anthropology. Later I took the Ph.D. Degree at Yale. As for my experience, I have been teaching and doing research work since 1916. I have been a full professor since 1921. During the war I was—during the first war I was psychological examiner and then chief of the re-education service in one of the hospitals. In the second world war I was a consultant on personnel problems part time for the Adjutant General's Office of the Army and then immediately after the surrender [fol. 249] I was a morale analyst in Japan. I then—I have had a number of part-time positions; I was consultant for the Forest Service on human relations. I was consultant to the West Virginia Department of Education on the curriculum in their state teachers colleges. I was chairman of the counsel on human relations appointed by the American Association for the Advancement of Science, for work with the Conservation Departments of the government, and I spent some six months in the study and research in the field of child development under the auspices of the American Council on Education.

Q. Have you ever held office in, or been a member of, any learned societies?

A. Yes, in the American Psychological Association I am a Fellow; I have been a member of the Council of Directors, and I have been chairman of the Committee on Professional Ethics of that association. At the moment I am president

of the Division of Educational Psychology of that association. In 1940 I was president of the American Association for the Advancement of Science—for the American Association for Applied Psychology, and I have been president of the Ohio State Psychologists and the Midwestern Psychological Association. And I am a Fellow of the British Psychological Society and member of the Executive Committee of the Psychology Section of the American Association for the Advancement of Science.

Q. Have you ever published any books or articles in the field of education and psychology, Dr. English?

A. Published with Victor Ramey, of the University of Colorado, a book on studying the individual school child. Just this year brought out a textbook on child psychology, and I have published something around 150 articles in professional journals.

Q. Have you ever made any studies bearing on the capacities of different groups to profit by education?

A. Yes. As a matter of fact my first research, which was begun in 1912, was addressed to this very thing; the results were published in 1918. Then I was also on the team which brought out the celebrated alpha test of intelligence in the United States Army, as I helped with the experimental work which lead to that; and I have been continuously occupied in the field of individual differences and of group differences, and I teach that subject at the Ohio State University. Then I also supervise somewhere between 75 and 100 students a year who make case studies of individual children and I may add some of these are always negro children. I have done some research studies in the field of attitudes, including two of them concerning the attitudes of negroes and, finally, in this list I have done a rather prolonged series of experiments in the field of learning with special reference to how children learn in school, rather than mere laboratory learning.

Q. Dr. English, have you told me all the courses that you now teach at Ohio State University?

A. No; I teach chiefly individual differences, child psychology and the more practical aspects of learning, rather than theoretical, and I also teach the theory of personality. Those are the main courses.

Q. Dr. English, at this point I want to ask you a hypothetical question. I want you to assume that in the City of Topeka there is a body of white school children and a body of negro school children, and that there is also racially enforced segregation in the schools. Would you say that on the basis of your learning, experience and study that on the basis of color alone there is a difference in their ability to learn?

A. No, there certainly is not.

Q. Would you tell me, the support for your statement.

A. Well, in the first place, we don't have racial groups learning; we have individuals learning and in both groups, white and negro, we have some persons who are very good learners; we have some persons who are very poor learners, and we have some medium learners. You can break that down to as fine a point as you like; the range is exactly [fol. 252] the same. Well, I say that, as a matter of fact, with regard to school children in respect to the I. Q. which is the best single measure of a child's ability to learn. The best I. Q. on record is that of a negro girl who has no white blood as far as that can be told at all, but right after this child there are four white children, so, you see, it's—at the top it's quite equal and at the bottom it's quite equal and in the middle it's quite equal. It's a matter of individuals and not a matter of groups. So knowing only the color you can't predict at all how well a child can learn. If a child is white you can't tell from that fact alone how well that child will learn in comparison with a group of negro children and, of course, vice versa from the fact that a child is a negro you can't tell how well he will learn with respect to a group of white children. From color alone there is no telling. We know that the negro child, moreover, learns in the same way, that he uses the same process in learning and learns the same things, but I do want to make one exception; it's a notable exception: If we din it into a person that it is unnatural for him to learn certain things, if we din it into a person that he is incapable of learning, then he is less likely to be able to learn.

Q. That difference is not based upon any inherent quality.

A. Not at all. It's a parallel exactly the way it is with [fol. 253] women learning mathematics. There is sort of

UNIVERSITY OF TEXAS  
SCHOOL OF LAW  
TARLTON LAW LIBRARY

156

a superstition that women are naturally incapable of learning mathematics, and so they don't, most of them, learn it. They can, if they will, and some of them do, but there is a tendency for us to live up to, or perhaps I should say to live down to the social expectation and to learn what we think people say we can learn, and legal segregation definitely depresses the negroes expectancy, and is therefore prejudicial to his learning. If you get a child in the attitude that he is somehow inferior, and he thinks to himself, "Well, I can't learn this very well.", then he is unlikely to learn it very well.

Q. Dr. English, is there any other scientific evidence to support this conclusion which you have stated other than what you have said.

A. Yes, there is a good deal. For example, in the last war we took the people who were illiterates. These, of course—a good many more of them were colored than white, but we put them into schools to teach them fourth-grade literacy and, as a matter of fact, 87% of the negroes and 84% of the whites successfully completed the work of these schools. Now I don't make anything of the difference of 3% in favor of the negroes as compared with the white. That is, of course, within the range of accidental error, but I say these results do show that under favorable conditions [fol. 254] and under conditions of motivation where these men wanted to learn, the negro men proved that they could learn as well as the whites. Most of the scientific evidence concerns intelligence testing, which, as I said a moment ago, is the best single measure of the ability to learn, and the scientific question that we would ask is, "Are there differences in intelligence which we find? Are these differences due to race or are they due to unequal opportunities?" and the whole trend of the evidence, beginning with the work in 1912, but especially beginning after the first world war when we analyzed the scores of the recruits in the first world war, the whole trend of the evidence is this, and there are no real exceptions to this trend, that wherever we try to equalize the opportunities, we minimize or extinguish the differences in learning ability as between the two racial groups. Perhaps the best study of this is Dr. Klineberg's study showing the results of the migration to New York

City of children from the deep south. He found—of course we all know that the schools in the south, and particularly the negro schools in the south, are by and large inferior. There are some cities in the south where the schools are very good, but the general tendency, and especially in the rural regions, is for the educational opportunities in the south to be very bad and particularly bad for negroes. [fol. 255] These things are well known in educational circles. So the negroes then coming out of these very poor school situations had very low ability to learn. They seemed stupid and their intelligence test scores were low. But each year that they were in the more favorable learning opportunities in the north, their intelligence quotient was rising, and the longer they were in that favorable region the more their intelligence rose, so that the conclusion is unavoidable that their previous condition was due to the unfavorable opportunities.

Q. Dr. English, is there any scientific evidence to the contrary?

A. Very little indeed and such little evidence as there is doesn't stand up. Now, for example, there was a study by a man named Tanzer, worked with Canadian negroes in a place in Ontario. They went to the same school with the whites, and the whites were, as a group, somewhat better than the negroes. But in this study when we reanalyze the data we found that the negroes were of lower economic status, and we know that lower economic status affects these things, and we found that the negro children went to school less often. In the white group the attendance was 93 and in the colored group it was 84% of the time. With a loss of schooling like that and coming from an inferior group, the tendency is to think that the difference found was [fol. 256] attributable to these unfavorable factors, rather than the race itself. Certainly these factors that I mention were a contributing cause, and I don't say they are the whole thing; they themselves reflect the whole tissue of social circumstances which somewhat discouraged negro learning, and this is a rather typical sample of the few, the relatively few, studies which even seem to point in the opposite direction. The overwhelming tendency is all in the direction of my first statement. May I summarize that?

It seems to me that what we have here is that the segregation tends to create—first of all, segregation seemingly is based upon a fallacy of a difference and then by the mere fact of segregation it turns around and creates the very difference which it assumes to have been present to begin with, and we get into a vicious circle.

Q. Dr. English, I would like to ask you another hypothetical question now, and I would like you to answer on the basis of your experience and learning as an educational psychologist. I want you to assume that a negro child lives within a few blocks of a school; that he lives a much greater distance from another school, which is a negro school which he is compelled to attend on the basis of race; that he spends perhaps a half hour, perhaps more, perhaps an hour or two a day travelling to and from school, whereas if he were not compelled to attend this negro school he [fol. 257] would spend a few minutes, perhaps fifteen or twenty minutes, a day going to and from school. Would you say that if all other factors were equal that he would receive the same benefits from attending the negro school as he would from attending the white school?

A. Definitely not.

Q. Give us the reasons.

A. May I say—perhaps your question is, you say from attending the negro school. May I broaden it, from his education, if the Court will permit that extension because it's the whole education of the child which is being damaged here. The education of the child is not wholly in the classroom. The education of the child goes on on the playground, in playing with his equals and his fellows, around home. This is one of the most important things for the wholesome development of the child and, when you take an hour a day from a child, you are taking away something very precious to his total education. I have had this in my own home because one of my children had to go to quite a distant school because of a physical handicap, and we could see the results upon his development of this deprivation. It was one of those things we couldn't help. I gather that what you are talking about is something that we could help if it were not for the presence of the law.

[fol. 258] Q. Is there any scientific data supporting this opinion which you have just given, Dr. English?

A. It would be very hard to find it, for me to recall it. It's one of those things which has such universal consent that I can't recall it ever being challenged. I am sure we see in our clinics all the time, as we examine children who are disadvantaged and who are maladjusted, we see all the time the evidence of the children who do not get out and play with others. As a matter of fact, I don't think there is any—I am sure there is no psychologist, no child psychologist in the country who would challenge the statement that there is—that the child's play is of the utmost importance and should not be unnecessarily diminished.

Mr. Greenberg: That is all.

Cross-examination.

By Mr. Goodell:

Q. Dr. English, this opinion you have rendered is somewhat founded upon theory, is it not?

A. No, sir, it is based upon literally thousands of experimental studies.

Q. How many cases have you taken, for example, of children that have gone to segregated schools and followed them through—you yourself—and examined their situation in adult life.

A. Well, now to what answer of mine is that addressed. I [fol. 259] thought you were asking me about the question of individual differences.

Q. No.

A. What are you asking them about.

Q. Have you personally conducted a survey or supervised a survey where you took cases of children that had gone through, negro children, that had gone through segregated schools and examined them in their adult life to determine whether or not the fact that they had gone to segregated schools had any bearing or relation to their success or achievement record.

A. I don't believe that I testified on that point, did I?

Q. I didn't say you did. I am asking you if you have ever done such a thing.

A. I have not done such a thing. I am not sure that it'slevant at all to my testimony.

Q. Well, is it possible that you could be in error in some of your conclusions here? Could you be mistaken about some of them?

A. Every man can be mistaken; certainly I can.

Q. You could be mistaken, couldn't you?

A. Oh, yes.

Q. Have you given this expert testimony around the country in cases such as this?

A. No, sir, never before; I teach it.

[fol. 260] Q. Now, Doctor, the ideal state, if I understand your testimony, that you testified in your opinion to, would be where you had no segregation as far as educational process.

A. I don't think I said anything about the ideal state.

Q. Well, it would be better, in other words, is that right?

A. I certainly believe that things would be better if we had no segregation, but that is not an expert opinion; that is my personal opinion. I didn't testify to that.

Q. Well, I mean restricting it to the educational process is what I meant.

A. Yes, without any doubt.

Q. Would you—would it change your opinion any if the facts present in this community were that the child, the negro child, that we are dealing with, if he went to a white school he would be outnumbered ten to one or fifty to one.

A. Not at all. I have seen that happen. I have grown up in schools where that happened myself. I have seen it happen repeatedly. We have it in our own city.

Q. Don't you think there is a general tendency, forgetting the racial thing, for the majority to rule and operate the thing that they belong to.

A. In what sense "majority"?

Q. Well—

A. Racial majority?

[fol. 261] Q. Assuming you had 500 white children going to Randolph School and ten negro children. What would be the natural tendency, taking into account the human element and human equations of whether the negro children

would run that school or participate actively in the student activities or whether it would be run by the white students?

A. Well, of course, the majority would generally have a preponderant voice if they divided along racial lines which they tend to do, but which they do not invariably do. I have seen many cases where the colored child receives in a mixed school from the majority group considerable amount of status and honor. You may recall just recently a man was elected captain of the football team in a predominantly white school. I think it was Williams or Amherst, I am not quite sure which, and this is reproduced all the way through our school systems where we do have mixed schools.

Q. And there are some outstanding negroes in different fields of professions and—who have received their—part of their education—in the deep south in segregated schools.

A. That is true.

Q. And yet have achieved great places of importance, isn't that right?

A. Education isn't the whole answer to ability; it is merely one factor. There are men who are big enough, [fol. 262] white or black, to rise above unfavorable circumstances.

Q. Surely. You are familiar, of course, as an educator, with the experience that was had back in the reconstruction days, sometimes referred to as the carpet-bagger days in the south.

A. Very definitely.

Q. You realize that a certain element, radical element I would call it, of the Republican party, perhaps to gain some political advantage, decided to go down in the various states and abolish certain segregation; you realize that was done.

A. Well, there wasn't exactly segregation at that time, but they did go down there and set up some laws of one sort or another, yes.

Q. Which attempted, in one swoop, to eliminate all of their custom and usages of those communities in the south, didn't it?

A. I am not here as an expert on history, but I read history that way, yes.

Q. Surely. Don't you realize that the experience of that period was that they had a tremendous amount of trouble, tremendous amount of emotional outburst and that it caused a great deal of strife between the races and didn't work at all.

[fol. 263] A. Well, if the Court wants a layman's opinion on history, I will answer that question to the best of my knowledge as a layman on history; I am not here as a historian.

Judge Huxman: It seems to me the question is going far afield.

Mr. Goodell: That is all.

Judge Huxman: Any further questions of the doctor? If not, you may step down, doctor.

(Witness excused.)

WILBUR B. BROOKOVER, having been first duly sworn, assumed the stand and testified as follows:

Direct Examination.

By Mr. Greenberg:

Q. Mr. Brookover, will you please state your full name.

A. Wilbur B. Brookover.

Q. What is your occupation?

A. I am a social psychologist by profession. The position I now hold is professor of social science, sociology, at Michigan State College.

Q. What degrees do you hold, Mr. Brookover?

A. I hold an A.B. Degree from Manchester College, a Master of Arts Degree and a Doctor of Philosophy Degree in sociology and psychology from the University of Wisconsin.

Q. Are you a member of any learned societies, Doctor?

[fol. 264] A. I am a member of the American Sociological Society, Society for Applied Anthropology, Society for the Psychological study of Social Issues, the High Valley